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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )

Implementation of the Local )  
Competition Provisions of the )  
Telecommunications Act of 1996 )

CC Docket No. 96-98

Interconnection between Local )  
Exchange Carriers and Commercial )  
Mobile Radio Service Providers )

CC Docket No. 95-185

REPLY COMMENTS OF WORLDCOM, INC.

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**TABLE OF CONTENTS**

I.	INTRODUCTION AND SUMMARY . . . . .	2
II.	ALLOWING CARRIERS TO USE TRANSPORT UNES TO PROVIDE EXCHANGE ACCESS AND INTEREXCHANGE SERVICE IS NOT INCONSISTENT WITH THE JURISDICTION OF THE FCC AND STATE COMMISSION OVER INTERSTATE AND INTRASTATE ACCESS CHARGES, RESPECTIVELY . . . . .	4
III.	INTEREXCHANGE CARRIERS ARE NOT OBLIGATED TO PURCHASE ACCESS SERVICES, BUT ILECS ARE OBLIGATED TO OFFER THEM . . . . .	6
IV.	UNRESTRICTED USE OF TRANSPORT UNES WOULD NOT UNDERMINE THE UNIVERSAL SERVICE SUPPORT MECHANISM . . . . .	7
V.	DEDICATED OR SHARED TRANSPORT UNES DO NOT PRESENT THE SAME PRACTICAL DIFFICULTIES AS UNBUNDLED SWITCHING AND THE UNBUNDLED LOOP . . . . .	9

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**REPLY COMMENTS OF WORLDCOM, INC.**

In its opening Comments, WorldCom, Inc. ("WorldCom") provided a detailed analysis of Section 251(c)(3) of the Communications Act of 1934 (the "Act"), as amended by the Telecommunications Act of 1996,<sup>1</sup> 47 U.S.C. § 251(c)(3). WorldCom demonstrated that, under this section, the Commission should make it clear once and for all that any telecommunications carrier may purchase dedicated or shared transport facilities on unbundled network element ("UNE") basis and, in conjunction with unbundled switching, use such facilities to originate and terminate toll traffic to customers to whom the carrier does not provide local exchange service. WorldCom was joined by numerous other commenters in urging this result, which will help fulfill Congress's goal of injecting more competition in all telecommunications markets.<sup>2</sup>

As detailed herein, nothing in the opening comments of other parties justifies the Commission reaching a different conclusion.

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<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act").

<sup>2</sup> *E.g.*, AT&T, CompTel, KMC Telecom, LCB Communications, and MCI.

## I. INTRODUCTION AND SUMMARY

It is not surprising that, in their opening comments, the incumbent local exchange carriers ("ILECs") contend that the Commission should not allow requesting telecommunications carriers to use unbundled transport to originate and terminate toll traffic where the carrier does not also provide local exchange service to the originating or terminating end user, respectively. These entrenched carriers perceive such a ruling, as discussed in the *Further Notice of Proposed Rulemaking* ("*Further Notice*"),<sup>3</sup> as a threat to guaranteed revenues under non-cost-based access charges. Nor is it surprising that the trade association for the competitive local exchange services industry, the Association of Local Telecommunications Services ("ALTS") took a similar position, since the non-cost-based access charges of the ILECs provide a price umbrella under which some of the membership of ALTS hopes to continue to operate for as long as possible.<sup>4</sup>

Importantly, none of the ILECs seriously suggests that the basic meaning of 251(c)(3) is unclear that UNEs can be used to provide *any* telecommunications services. Rather, the ILECs propose various other bases for their position, but none of these has merit, as amplified herein. *First*, the proposed Commission action would not cede jurisdiction over interstate access charges to the states. Indeed, access charges are not directly at issue. The scope of use of unbundled network elements is. If the proposal is adopted as urged by

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<sup>3</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Third Order on Reconsideration and Further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 97-295 (Aug. 18, 1997) ("*Third Reconsideration Order*" and "*Further Notice*").

<sup>4</sup> WorldCom, an ALTS member, did not participate in the association's comments. See Comments of ALTS at 2. Nor did MCI.

WorldCom, the Commission will retain full jurisdiction over interstate access charges.

*Second*, adoption of the rule proposed in the *Further Notice* would not give the FCC jurisdiction over intrastate access charges. Like the FCC, the state commissions would retain full jurisdiction over access charges that are currently jurisdictionally under their purview.

*Third*, the proposed action is not inconsistent with Section 251(g) of the Act. As stated earlier, the existing access charge regime is not being eliminated. Far from it. Part 69 (as amended) remains and will remain in full force. What is changing, as the FCC noted in its *Local Competition Order*,<sup>5</sup> is that IXC's, through the availability of UNEs under the 1996 Act, have been given an alternative to ILEC exchange access to originate and terminate toll traffic. By refusing to adopt restrictions on the use of transport UNEs, the Commission would merely confirm that option as it did in its *Access Charge Reform* proceeding.<sup>6</sup>

*Fourth*, the decision WorldCom advocates would not undermine universal service support as some ILECs contend. Most access charges will continue to be collected, and monies will be received for transport UNEs. Further, adopting the proposed ruling would not be inconsistent with the Eighth Circuit's decision in *CompTel*, which addressed a temporary measure adopted before and set to expire upon the adoption of the *Access Charge*

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<sup>5</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Report and Order, CC Docket No. 96-98, 11 FCC Rcd 15499 (*Local Competition Order*), *Order on Reconsideration*, 11 FCC Rcd 13042, *Second Order on Reconsideration*, 11 FCC Rcd 19738 (1996), *Third Reconsideration Order*, *supra*, further recon. pending, *aff'd on part and vacated in part sub. nom. CompTel v. FCC*, 117 F.3d 1068 (8th Cir.) (*CompTel*), *aff'd in part and vacated in part sub nom. Iowa Utilities Bd. v. FCC and consolidated cases*, No. 96-3321 et al., 1997 WL 403401 (8th Cir., Jul. 18) (*Iowa Utilities Bd.*), *modified on rehearing*, slip op. (8th Cir. Oct. 14, 1997).

<sup>6</sup> See Comments of WorldCom at 2-3 quoting *Access Charge Reform*, First Report and Order, CC Docket No. 96-262, FCC 97-158 (May 6, 1997) ("Access Charge Reform Order") (subsequent history omitted) ¶ 32.

*Reform Order*, and otherwise dealt with *interconnection* under Section 251(c)(2) of the Act — *not UNEs* under Section 251(c)(3), which are at issue here.

*Finally*, the practical difficulties that attend use of unbundled *local* switching where the carrier does not provide local exchange service to the end user do not apply to transport UNEs or unbundled *tandem* switching. These latter UNEs are not dedicated to particular end users, so there is no legal or practical reason why transport and tandem switching UNEs cannot be used to provide only exchange access or interexchange service.

**II. ALLOWING CARRIERS TO USE TRANSPORT UNEs TO PROVIDE EXCHANGE ACCESS AND INTEREXCHANGE SERVICE IS NOT INCONSISTENT WITH THE JURISDICTION OF THE FCC AND STATE COMMISSION OVER INTERSTATE AND INTRASTATE ACCESS CHARGES, RESPECTIVELY**

Some ILEC commenters contend that the FCC would be improperly transferring to the states its authority over interstate access charges if it refuses to restrict use of transport UNEs.<sup>7</sup> The commenters argue that, under Section 251(i), the 1996 Act made clear that the authority of the Commission under Section 201, which provides the FCC's jurisdiction over interstate access charges, is not to be affected by Section 251(c)(3) and 251(d)(2), which require ILECs to make UNEs available. These parties also contend that, while the Commission has not been granted authority over intrastate access charges, the conclusion that carriers may, without restriction, use transport UNEs to originate and terminate toll traffic would, in effect, wrest that authority away from the states.

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<sup>7</sup> See, e.g., Comments of GTE at 11-12; Comments of Ameritech at 11-12; Comments of USTA at 6-7.

These commenters miss the basic point, which has been reiterated by both the Commission and the Eighth Circuit: exchange access services and UNEs are two separate things. If a carrier purchases a UNE from an ILEC and uses it to provide itself or other carriers exchange access, it is *not* purchasing exchange access service from the ILEC. Thus, in a very real sense, the *Further Notice* is not proposing any change to the interstate or intrastate access charge systems. As the Commission observed in the *Local Competition Order*, although UNEs could be used by an IXC to originate and terminate interstate calls, this does not alter the fact that:

Our exchange access rules remain in effect and will still apply where incumbent LECs retain local customers and continue to offer exchange access service to interexchange carriers who do not purchase unbundled elements, and also where new entrants resell local service.<sup>8</sup>

In the same manner would the states' access charge regulations remain operative. Further, where a carrier uses UNEs purchased from an ILEC to offer interstate access services to another carrier, the FCC would retain jurisdiction over such access services. Similarly, the states will retain authority over intrastate exchange access services.

In short, the Commission would not be affecting the scope of its or the state commissions' respective jurisdictions if it were to issue the decision urged by WorldCom. As the Commission confirmed in the *Local Competition Order*, UNEs are both intrastate and interstate in nature and do not fit the jurisdictional categories handed down by the separations process.<sup>9</sup> As such, they are outside jurisdictionally bound frameworks, such as the interstate

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<sup>8</sup> *Local Competition Order*, 11 F.C.C. Rcd at 15680.

<sup>9</sup> *See id.* at 15,545, and 15,682.

and intrastate access charge regimes. Conversely, simply allowing transport UNEs to be used by carriers to provide telecommunications services as unambiguously contemplated by Section 251(c)(3) does not in any way affect the validity or force of the respective federal and state jurisdiction over access charges.

### **III. INTEREXCHANGE CARRIERS ARE NOT OBLIGATED TO PURCHASE ACCESS SERVICES, BUT ILECS ARE OBLIGATED TO OFFER THEM**

Some of the ILEC comments suggest that the Commission should impose restrictions on carriers' use of transport UNEs because of Section 251(g) of the Act.<sup>10</sup> There Congress provided that each LEC that was providing exchange access at the time the 1996 Act was passed was obligated to continue to do so "in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation)" that applied immediately prior to the passage of the 1996 Act.<sup>11</sup> This obligation persisted until such time as the Commission explicitly adopted superseding regulations, which it did in its *Local Competition Order* and its *Access Reform Order*.

The ILECs' argument hinges on a construction that a lack of restrictions on the use of transport UNEs would upset or explicitly undercut the access charge regime. Apart from the fact that the proposed rule concerns UNEs, *not* access charges, as WorldCom explained above, the ILECs are confusing their obligation to offer exchange access per Section 251(g) with interexchange carriers' *option* to buy them. As the Commission stated in its *Access Charge Reform Order*, "by giving competitors the right to lease an incumbent LEC's

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<sup>10</sup> *E.g.*, Comments of Ameritech at 6-10.

<sup>11</sup> 47 U.S.C. § 251(g).



unbundled network elements at cost, Congress provided IXC's an alternative avenue to connect and share the local network."<sup>12</sup> Moreover, the Commission stated quite clearly why Section 251(g) does not apply in the UNE world in its *Local Competition Order*:

[T]he primary purpose of section 251(g) is to preserve the right of interexchange carriers to order and receive exchange access services if such carriers elect not to obtain exchange access through their own facilities or *by means of unbundled elements purchased from an incumbent*.<sup>13</sup>

Thus, quite plainly, Section 251(g) is not a requirement that IXC's continue to purchase exchange access services. Rather, it imposes an obligation upon ILEC's to continue to make such services available, nothing more. The result WorldCom urges is entirely consistent with this.

#### **IV. UNRESTRICTED USE OF TRANSPORT UNEs WOULD NOT UNDERMINE THE UNIVERSAL SERVICE SUPPORT MECHANISM**

Several ILEC's contend that unrestricted use of transport UNEs will undermine universal service by preventing ILEC's from recovering significant implicit subsidies remaining in access charges, even after the Commission's *Access Charge Reform Order*. Should requesting carriers use transport UNEs to provide exchange access or interexchange services where they do not also provide local exchange services to the end users involved, these parties assert, there will be a shortfall in the collection of universal service funds, or that burden will be improperly transferred to ILEC's.<sup>14</sup>

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<sup>12</sup> *Access Charge Reform Order*, ¶ 32.

<sup>13</sup> *Local Competition Order*, 11 FCC Rcd at 15,682 (emphasis added).

<sup>14</sup> See, e.g., Comments of GTE at 2-3; Comments of USTA at 9; Comments of Ameritech at 12-13.

The Commission should not heed these unfounded and alarmist calls. The record does not support the ILECs' contentions. The truth is that the decision WorldCom advocates would not significantly affect the level of revenues that ILECs receive from access charges, and therefore will not damage the universal service system. AT&T points out that where ILECs remain the provider of local exchange services to the end user, ILECs will continue to receive access charge revenues associated with the unbundled loop and local switching.<sup>15</sup> Similarly, ILECs will also collect end-user access fees such as the subscriber line charge.<sup>16</sup> Moreover, when carriers use transport (and tandem switching) UNEs as contemplated by the proposed rule, ILECs will receive revenues equal to the costs of such facilities, plus a reasonable profit.<sup>17</sup> Accordingly, there is little reason to believe that universal service will lead to a large-scale erosion of implicit universal service monies. (If the ILECs contend that the implicit subsidies are so large, then they should identify them and make them explicit, rather than rely upon suggestion and innuendo to attempt to use such subsidies, to the extent they exist, as a stumbling block to full implementation of Section 251(c)(3) of the Act.)<sup>18</sup>

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<sup>15</sup> ALTS seeks to enlarge the scope of this proceeding by asking the Commission to address the application of the residual TIC under Section 69.155(c). As ALTS notes, this is to be resolved in Docket No. 96-262 on reconsideration. Comments of ALTS at 4.

<sup>16</sup> AT&T Comments at 7.

<sup>17</sup> *Id.*; See also 47 U.S.C. § 252(d)(1).

<sup>18</sup> The reliance of some commenters upon the Eighth Circuit's decision in *CompTel* to uphold the Commission's transitional access charges upon carriers that use UNEs to provide exchange access is misplaced. See, e.g., Comments of Sprint at 7. (The principal part of the *CompTel* concerned the Commission's definition of Section 251(c)(2) interconnection which is not even at issue here. The Court did not address the relevant provision of the Act to *this* proceeding — Section 251(c)(3) — when resolving that issue.) The Court upheld the transitional access charge mechanism because it was in fact transitional with a specific and  
(continued...)

Rather than seeking to preserve implicit universal service subsidies, it is more likely that ILECs are attempting to preserve a guaranteed source of revenues. Given the absence of any evidence that there will be a material impact upon universal service, the Commission should not hesitate to make a ruling that there are no restrictions upon a requesting carrier's use of transport UNEs. Indeed, the Commission, in essence, already addressed this issue when it concluded that assessing access charges on UNEs is not necessary either to preserve alleged implicit subsidies or allow ILECs to meet their universal service obligations.<sup>19</sup>

**V. DEDICATED OR SHARED TRANSPORT UNES DO NOT PRESENT THE SAME PRACTICAL DIFFICULTIES AS UNBUNDLED SWITCHING AND THE UNBUNDLED LOOP**

A number of ILECs focus in their comments on the fact that the Commission, in the *Further Notice*, asked whether restrictions should be placed on the use of transport UNEs "in conjunction with unbundled switching."<sup>20</sup> These comments assume that the Commission is referring to unbundled *local* switching, but this premise is in error.

While the Commission has recognized the practical difficulties of using the unbundled loop or unbundled local switching element to provide telecommunication services when the

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<sup>18</sup>(...continued)

near-term deadline (no later than June 30, 1997). 117 F. 3d at 1074-75. Here, in contrast, the ILECs seek the imposition of a new "transition" of indefinite duration during which carriers may not use UNEs as contemplated by Section 251(c)(3). Accordingly, the Court's limited holding in *CompTel* provides no support for the ILECs' position. To the contrary, the fact that the transitional imposition of access charges was upheld in *CompTel* lends support to the position of WorldCom, AT&T, CompTel and others that the Commission may, consistent with Section 254 of the Act, adopt the rule proposed in the *Further Notice*.

<sup>19</sup> See, e.g., *Access Charge Order*, ¶ 338.

<sup>20</sup> E.g., Comments of U S WEST at 2.

carrier does not provide local exchange service to the end user,<sup>21</sup> these same practical limitations do not apply to the transport UNEs and unbundled tandem switching. LBC Communications joined WorldCom in noting that neither shared nor dedicated transport "are dedicated to a particular local exchange carrier."<sup>22</sup> The same is true of tandem switching. Accordingly, arguments of the ILECs against removing all restrictions on the use of transport UNEs based on the dedication of *local* switching to a particular end user miss the point and, at bottom, are irrelevant.

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<sup>21</sup> See *Local Competition Order*, 11 FCC Rcd at 15,679; *Order on Reconsideration*, 11 FCC Rcd at 13,048-49.

<sup>22</sup> Comments of LCB Communications at 2; see also Comments of WorldCom at 8.

**VI. CONCLUSION**

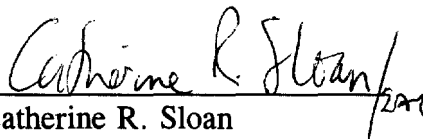
For the reasons set forth above and in its opening comments, WorldCom urges the Commission to continue to allow interexchange and other carriers to use transport (and tandem switching) UNEs to provide exchange access and interexchange services without restriction. Not only would such a procompetitive ruling advance the public interest, Section 251(c)(3) requires it.

Respectfully submitted,

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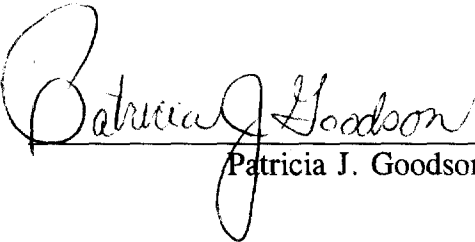
October 17, 1997

## **CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing Reply Comments were served by hand delivery on this 17th day of October, 1997, to the following parties:

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